

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED

SEP 23 2004

Michael N. Milby, Clerk of Court

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Plaintiff

v.

TEXAS COAST WAFFLES, INC. d/b/a
WAFFLE HOUSE #1381
Defendant.

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CIVIL ACTION NO. _____

H-04-3705

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT

1. This is an action under Title VII of the Civil Rights Act of 1964, *as amended*, and Title I of the Civil Rights Act of 1991, *as amended*, to correct unlawful employment practices on the basis of sex, and to provide appropriate relief to Joan Vandewarker and a class of female employees who were adversely affected by such practices. The Defendant, Texas Coast Waffles, Inc. d/b/a Waffle House #1381 unlawfully denied female employees equal employment opportunities by subjecting them to sexual harassment in violation of Title VII. Additionally, Defendant unlawfully terminated Ms. Vandewarker in retaliation for complaining to management about the sexual harassment.

JURISDICTION AND VENUE

2. Jurisdiction of this court is invoked pursuant to 28 U.S.C. §§451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 706 (f)(1) and (3) of Title VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. §2000e-5(f)(1) and (3) ("Title VII") and Section 102 of the Civil Rights Act of 1991, *as amended*, 42 U.S.C. §1981A.

3. Venue is proper in this court because the unlawful employment practices alleged below were and are now being committed within the jurisdiction of the United States District Court for the Southern District of Texas, Houston Division.

PARTIES

4. Plaintiff, the Equal Employment Opportunity Commission ("Commission") is an agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Section 706 (f)(1) and (3), 42 U.S.C. §2000e-5 (f)(1) and (3).

5. Defendant Texas Coast Waffles, Inc. d/b/a Waffle House #1381 ("Waffle House") has continuously been and is now doing business in the State of Texas and the City of Seabrook and has continuously had more than 15 employees. Waffle House may be served with process by serving its registered agent in Texas, Larry Cannon, 1803 W. Main Street, League City, Texas 77573.

6. At all relevant times, Waffle House has continuously been an employer engaged in an industry affecting commerce with the meaning of Sections 701(b),(g) and (h) of Title VII, 42 U.S.C. §2000e(b), (g) and (h).

STATEMENT OF CLAIMS

7. More than thirty days prior to the institution of this lawsuit, Joan Vandewarker filed a charge of discrimination with the Commission alleging violation of Title VII by Waffle House, her former employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Since at least 2001, Waffle House has engaged in unlawful employment practices at its restaurant #1381 located in Seabrook, Texas, in violation of Sections 703(a)(1) and 704(a) of Title VII.

9. Waffle House, by and through its agent, Corey Ritnour, a manager at the restaurant, subjected Ms. Vandewarker and other female employees to unwelcome sexual propositions and comments, sexual gestures, and offensive touching because of their sex, female. Specifically, among other things, Mr. Ritnour told female employees that he wanted them to engage in anal sex with him, requested female employees to touch his penis, forcibly made one female place her hand on his penis, made offensive comments about the breasts and buttocks of female subordinates, made offensive comments about his sex life to female employees and used sexually explicit language and gestures and engaged in other inappropriate workplace behavior. The sexual harassment was repeatedly reported to management at Waffle House, yet no effective action was taken to halt the harassment. At least one female employee, when she complained to management about the sexual harassment, was merely advised to avoid him. The complained of conduct was so sexually hostile and occurred with such frequency and severity that it affected the terms, conditions, benefits and privileges of employment and created a hostile work environment.

10. Ms. Vandewarker, as other women had before her, complained to management about the sexual harassment. As a result of her complaint, the hours she worked were cut and she was told that the restaurant had no hours for her any longer. She was informed that she was being terminated, that no one supported her complaint. Other women felt compelled to resign their employment with Waffle House in order to escape the

sexually hostile work environment.

11. Ms. Vandewarker and other female employees were subjected to a series of separate, harassing acts that collectively constituted an unlawful employment practice.

12. The unlawful employment practices complained of above were intentional and based on the gender of Ms. Vandewarker and the other female employees.

13. The effect of the practices complained of above has been to deprive Ms. Vandewarker and other female employees of equal employment opportunities and otherwise adversely affect their status as employees, because of their gender, by requiring them to be subjected to sexual harassment in the workplace.

14. The unlawful employment practices described above were committed with malice or with reckless indifference for the federally protected civil rights of Ms. Vandewarker and other female employees.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

15. Grant a permanent injunction enjoining Waffle House, its officers, successors, assigns and all persons in active concert or participation with it, from engaging in employment practices which discriminate on the basis of sex;

16. Order Waffle House to institute and carry out policies, practices and procedures which provide equal employment opportunities for women and which eradicates the sexually hostile work environment;

17. Order Waffle House to make Ms. Vandewarker whole by providing appropriate back pay, with prejudgment interest in amounts to be determined at trial, and

other affirmative relief necessary to eradicate the effects of the unlawful employment practices she was subjected to;

18. Order reinstatement into a comparable position for Ms. Vandewarker or award front pay in the amounts to be proven at trial if reinstatement is impractical;

19. Order Waffle House to make whole those females who were constructively discharged from their employment as a result of the sexual harassment by providing appropriate back pay, with prejudgment interest in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of the unlawful employment practices they were subjected to;

20. Order reinstatement into comparable positions for each of the class of females who were constructively discharged from their employment as a result of the sexual harassment or award front pay in the amounts to be proven at trial, if reinstatement is impractical;

21. Order Waffle House to pay compensatory damages to Ms. Vandewarker and to each of the class of females subjected to sexual harassment in the workplace for their past and future pecuniary losses resulting from the unlawful employment practices described above;

22. Order Waffle House to pay compensatory damages to Ms. Vandewarker and to each of the class of females subjected to sexual harassment in the workplace for their past and future non-pecuniary losses including emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses they suffered as a result of the unlawful employment practices described above, in amounts to be proven at trial;

23. Award punitive damages to Ms. Vandewarker and to each of the class of female employees of Waffle House subjected to the unlawful employment practices described above, in amounts to be proven at trial;

24. Award pre-judgment and post-judgment interest on all amounts recovered as allowed by law;

25. Order all affirmative relief necessary to eradicate the effects of its unlawful employment practices;

26. Award the Commission its costs in this action; and

27. Grant such other and further relief as the Court deems necessary and proper.

JURY TRIAL DEMANDED

28. The Commission requests a jury trial on all questions of fact raised by its complaint.

Respectfully submitted,

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

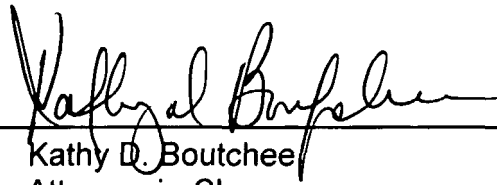
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By: _____



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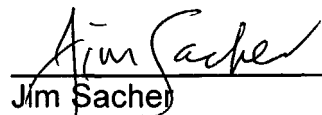
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(Rev. 07/89)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I(a) PLAINTIFFS

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

TEXAS COAST WAFFLES, INC. d/b/a WAFFLE HOUSE #1381

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Kathy Boutchee, Senior Trial Attorney
EEOC-Houston District Office
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Houston, Texas 77002
(713) 209-3399

ATTORNEYS (IF KNOWN)

United States Courts
Southern District of Texas
FILED

SEP 23 2004
TH

Michael N. Anby, Clerk of Court

II. BASIS OF JURISDICTION

(PLACE AN x IN ONE BOX ONLY)

☒ 1 U.S. Government
Plaintiff

☐ 2 U.S. Government
Defendant

☐ 3 Federal Question
(U.S. Government Not a Party)

☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

FOR PLAINTIFF AND ONE BOX FOR DEFENDANT

PTF DEF

PTF DEF

Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place
of Business in This State

Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place ☐ 5 ☐ 5
of Business in Another State

Citizen or Subject of a ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6
Foreign Country

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Texas Coast Waffles, Inc. d/b/a Waffle House #1381 subjected Joan Vandewarker and a class of female employees to discriminatory treatment by unlawfully denying female employees equal employment opportunities by subjecting them to sexual harassment in violation of Title VII and unlawfully terminating Ms. Vandewarker in retaliation for complaining to management about sexual harassment.

V. NATURE OF SUIT (PLACE AN x IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury--Med Malpractice <input type="checkbox"/> 365 Personal Injury--Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Other	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS--Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions

VI. ORIGIN

(PLACE AN x IN ONE BOX ONLY)

☒ 1 Original
Proceeding

☐ 2 Removed from
State Court

☐ 3 Remanded from
Appellate Court

☐ 4 Reinstated or
Reopened

Transferred from
☐ 5 another district
(specify)

Appeal to District
☐ 6 Multidistrict
Litigation ☐ 7 Judge from
Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION

DEMAND \$

Check YES only if demanded in complaint:

☐ UNDER F.R.C.P. 23

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See instructions)

JUDGE

DOCKET NUMBER

DATE
9/23/04

SIGNATURE OF ATTORNEY OF RECORD

Kathy Boutchee

UNITED STATES DISTRICT COURT